

FORCED CHILD LABOR ADVISORY



December 2000

**Advisory
International Child Labor Enforcement
U.S. Customs Service**

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ADVISORY

International Child Labor Enforcement
U.S. Customs Service

I. Introduction

This Advisory provides important information intended to help importers, manufacturers, retailers, trade association officials, attorneys, customs brokers and freight forwarders, and other businesses involved in importing merchandise from foreign countries, or advising their clients and member companies regarding import transactions, identify merchandise that may be produced with forced or indentured child labor under penal sanction¹ and thereby facilitate voluntary compliance with federal law prohibiting the importation of goods produced with forced or indentured child labor.

The Advisory describes the types of working conditions that may, in the view of the U.S. Customs Service, signal the presence of forced or indentured child labor. The Advisory presents two sets of indicators, “*red flags*” and “*yellow flags*,” that importers and others can use in seeking to determine whether specific merchandise is likely to be prohibited from importation on the grounds that it was produced with forced or indentured child labor. The indicators track the kind of evidence that the U.S. Customs Service considers in determining whether merchandise should be denied importation.

The first group of indicators identifies “*red flags*,” factors that alone, or with other available information, strongly imply that a supplier in a foreign country may be using forced or indentured child labor, or sourcing from a facility that does so. In general, these red flags should raise serious suspicion on the part of importers and others involved in importing merchandise into the United States that forced or indentured child labor is being employed.

The Advisory also identifies “*yellow flags*,” working conditions or business practices that, while not necessarily constituting direct evidence of forced or indentured child labor, should create suspicion on the part of importers that unfair or illegal labor practices, possibly including employment of forced or indentured child workers, might be involved. At a minimum, yellow flags generally warrant further serious inquiry and investigation.

The Advisory also briefly explains the legal framework under which the U.S. Customs Service operates and the procedures it follows in enforcing the law. In addition, it identifies a number of possible information sources and procedures that may help importers and others identify goods produced with forced or indentured child labor. It is hoped that this information will encourage individual companies, trade associations, and

¹ As used in this document, “indentured child labor” refers to “indentured child labor under penal sanction,” as specified by 19 U.S.C. § 1307.

business advisors to adopt checklists, practices, and industry guidelines that will reduce the risk of becoming engaged in an import transaction involving merchandise produced with forced or indentured child labor. Informed, voluntary compliance on the part of importers is good, common sense business practice and helps avoid monetary penalties and/or shipments being detained, and possibly seized and forfeited, by U.S. Customs.

II. Forced or Indentured Child Labor in Export Industries

Abusive child labor is one of the most serious worker and human rights issues facing the world trading community. Studies conducted by the U.S. Department of Labor, the International Labor Organization (ILO), and a number of non-governmental organizations (NGOs) indicate that child labor is endemic in many parts of the developing world. The ILO estimates that there are approximately 250 million child workers worldwide.

Child labor can be found in many industries that produce goods for export, including the production and processing of hand-knotted carpets, apparel, footwear, brassware, silk, glassware, bricks, furniture, food, gems, and leather.² Some of the industries in which children are employed are hazardous, such as production of fireworks and matches, glass blowing, and mining. Other occupations are not necessarily intrinsically dangerous, but often expose working children to hazards such as airborne pollutants, pesticides and herbicides, and other health risks. In some countries, government policies to promote exports of low-skilled, labor-intensive products, such as garments and carpets, may have resulted in an increase in the demand for and use of child labor, which may be forced or indentured. (See *By the Sweat and Toil of Children: The Use of Child Labor in American Imports* (vol. 1), U.S. Department of Labor, July 15, 1994.)

Not every forced or indentured labor situation involves openly cruel and abusive circumstances, but employment at a tender age; excessively long work hours; virtual imprisonment, including physical restraints; use of physical force and abuse to enforce the work obligation; a debt that can never be discharged and that in fact grows larger, are all too common, and signal the possible presence of forced or indentured child labor.

III. Legal Framework Prohibiting Importation of Merchandise Produced with Forced or Indentured Child Labor

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of merchandise produced in whole or in part with prison labor, forced labor, or indentured labor under penal sanction. Forced labor includes “all work or service . . . exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily” (19 U.S.C. § 1307). The law applies to goods produced by convict labor, forced labor, or indentured labor under penal sanctions performed by a person of any age. It was amended this year to make explicit that forced labor or indentured labor under penal sanction

² The industries noted above are the primary export industries employing child labor. While child labor involved in these industries is not necessarily forced or indentured, businesses seeking to import these kinds of products need to be aware that child labor is most commonly found in these products, and to take appropriate steps to make sure that the goods they seek to import are not in fact made with prohibited forced or indentured child labor.

includes forced or indentured child labor.³ (P.L. 106-200, Title IV, § 411(a), 114 Stat. 298) (**Appendix A** discusses Section 307 and related Customs regulations in greater detail.)

The law applies to merchandise produced “wholly or in part” with prohibited labor. Accordingly, a product must be free of components produced with forced or indentured labor to qualify for admissibility into the United States. For example, carpets produced in a carpet factory that does not itself employ prohibited child labor in the carpet weaving would nonetheless not be eligible for import into the United States if the factory relied on a supplier of yarn that used forced or indentured child labor in carding, spinning, and/or dyeing wool.

The U.S. Customs Service enforces Section 307 and related regulations. Under Section 307, the Customs Service excludes from entry into the commerce of the United States any goods, wares, articles, and merchandise that it has reason to believe were mined, produced, or manufactured in a foreign country with forced or indentured child labor. (See Part V of this Advisory, discussing Customs enforcement actions.)

IV. Indicators

The nature of child labor in developing countries can sometimes make it difficult to determine whether merchandise has been produced in whole or part using forced or indentured child labor. Documentary evidence, such as a copy of a formal contract of indenture consigning a child to work for a term of years to pay off a debt, is not usually available. Indeed, a child may be consigned to a lengthy, and possibly abusive, indentured labor situation on the basis of a handshake and a lump sum cash payment from the employer to a relative of the child or a middleman.

Accordingly, voluntary compliance with U.S. law may, in individual cases, require importers and others involved in import transactions to seek to obtain and evaluate information about the circumstances involved in producing particular goods. Importers should attempt to consult the types of sources used by the U.S. Customs Service in seeking information about forced or indentured child labor, including oral or written testimony or circumstantial evidence from social workers; operators of children’s shelters; police and other local government officials; employees of international organizations; child workers or former child workers; and other knowledgeable parties. Direct evidence, including testimony of children currently working as forced or indentured laborers or former child workers, is obviously highly probative. In addition, circumstantial evidence

³ It should be noted that Section 307 does not apply to all child labor, only to forced or indentured child labor. Thus, if child labor is not forced or indentured, Section 307 does not prohibit the importation of products of child labor simply because a child was under the legal age for work in the relevant country or, as a minor, was incapable of entering into a binding legal contract of employment. Moreover, working in response to extreme economic pressure, including pressure to earn a livelihood due to severe poverty in a developing nation, does not necessarily constitute “forced labor” within the statutory definition. It must be emphasized that although 19 U.S.C. § 1307 was recently amended to emphasize that its prohibition includes forced or indentured labor by children, the statute prohibits forced or indentured labor by persons of any age, not just by children. U.S. trade laws and Customs regulations do not define “child” or “child labor,” and do not contain any reference to any particular age.

may also strongly indicate that abusive child labor practices, including forced or indentured child labor, are involved.

There is no sharp distinction between red and yellow flag indicators. Yellow flags differ from red flags primarily in that yellow flag factors are more generic and do not necessarily specifically indicate forced or indentured child labor. A yellow flag may signal the need for additional investigation to determine whether forced or indentured child labor is being performed in a facility.

In contrast, the presence of red flag conditions alone may provide sufficient grounds for the importer to decide that there is a serious risk that goods were produced with forced or indentured child labor, and to avoid seeking to import them on this basis. Red flag indicators are sufficiently strong that if clearly established, the Customs Service may base enforcement action on them alone. In any given individual factual setting, however, further investigation may reveal an innocent explanation for one or more red flags, while additional investigation of a yellow flag may disclose evidence of forced or indentured child labor.

A single factor evidencing harsh, abusive, or coercive conditions, such as slave labor conditions or indications of physical abuse, may provide strong evidence of forced or indentured child labor. Such indicators should be taken as raising a very serious warning to importers and others that merchandise produced under these conditions involves a high risk that it would be prohibited from importation. Moreover, the presence of numerous other factors may have a cumulative effect in supporting an inference that child labor is forced or indentured.

A. Red Flags

The following should be considered “red flags,” factors that the Customs Service regards as strong indicators of forced or indentured child labor, upon which the Customs Service may base enforcement action or further investigation. This list is not exclusive. Importers should consider any other pertinent factors that may tend to establish that child labor is forced or indentured and that the child is not offering himself or herself for employment voluntarily. In choosing suppliers, importers should make inquiries and adopt other safeguards to avoid suppliers where there is a high risk that such conditions may be present. (See **Appendix B** and **C**.)

- (1) **Slave labor conditions.** Slave labor conditions exist when a child is a virtual prisoner and is not free to choose to leave the work site and the employment. Evidence of slave labor may include (i) the use of chains and other physical restraints; (ii) physical confinement in or restricted egress from a facility, especially where a facility is locked and/or guarded, and the locked gates and doors and/or the presence of police or guards appear to exceed reasonable needs for the physical security of plant, equipment and inventory; (iii) use of physical force or abuse to keep the child at the workplace; (iv) the involvement of private or public police or security guards to return runaway workers to the job site and to enforce the work obligation by violence or imprisonment; and (v) isolated work sites, such as jungle camps or platforms at sea, where children are prevented from leaving, even at the end of an agreed term of service, by the inaccessibility of transportation not controlled by the employer.
- (2) **Employment to discharge a debt or debt bond.** This is the one of the main elements of indentured labor under penal sanctions under Section 307.

- (3) **Payments made to a party other than the worker.** This often indicates that the employment is indentured to pay off the debt of another, for example, a parent. While payment to a parent may represent an acceptable business practice, adopted because a child is a minor, the circumstances surrounding such payment should be examined to determine if it indicates that the parent is being paid for the child's indentured labor.
- (4) **Financial penalties for absenteeism, production errors, or refusal to work overtime, where such penalties eliminate wages or credits already earned or create indebtedness that must be discharged.** These and other manipulations of worker compensation to perpetuate and even enlarge the worker's indebtedness and create indefinite bondage may constitute persuasive evidence of forced or indentured child labor.
- (5) **Evidence of physical or sexual abuse of child workers at the workplace.** Physical intimidation of workers to keep them on the job, forestall complaints to authorities, and punish mistakes, is frequently an earmark of forced or indentured child labor.
- (6) **Employment of very young children.** No specific age raises a red flag. However, while a child slightly under legal work age may voluntarily skirt the law to earn money, the presence of children of tender age in the workplace, particularly in significant numbers, is likely to signal that they have been put to work involuntarily.
- (7) **Children who by their appearance seem to require immediate medical or psychological care by reason of an apparent physical or mental infirmity.** The presence in a work situation of child workers who appear to be in such poor physical or mental condition that immediate medical or psychological care seems necessary may indicate forced or indentured child labor.
- (8) **Employment of children not working as part of a family unit nor in the presence of a parent or other adult family member.** Especially when children of tender years are working in a situation that does not involve the family unit or the presence of a parent or other adult family member who can look out for the child's interest, forced or indentured child labor may be present. However, the presence of an adult family member or family unit does not by itself insulate employment from a finding of forced or indentured labor on the part of the child where other evidence suggests that the child's labor is forced or indentured.
- (9) **Girls working without adult female presence or supervision where this is contrary to local custom.** Girls are particularly vulnerable to being exploited in child labor situations. For girls in many developing nations, work away from the family setting, including forced or indentured labor, is often a weigh-station to forced prostitution. This risk is reinforced by the physical vulnerability of girls and the culture in some developing nations that devalues women and girls and discourages them from openly asserting their rights and interests. In a number of cultures, it is considered "out of place" and "not right" for girls, particularly of tender years, to be working outside the family and without adult female presence, and these conditions therefore may correlate with the girls' forced or indentured labor.

- (10) **Employment of children at a work site remote from their hometown or village.** Various studies indicate that child workers are often “collected” from their homes by a middleman and transported to a work site some distance away, where they are effectively removed from parental guardianship and subject to the dictates of the employer.

B. Yellow Flags

- (1) **Work being performed during unusual hours, such as early morning or late at night or when a child could be expected to be in school.** This may indicate that very long and excessive hours are being worked. Such circumstances may be very prejudicial to the health of child workers and their prevalence at a work site may correlate with children working under compulsion.
- (2) **Poor and unhealthy working environment, including, but not limited to, poor lighting and ventilation, and/or lack of access to food, water, and sanitary facilities.** While poor working conditions may be encountered by persons working voluntarily, neglect by the employer of basic worker amenities has a high correlation with abusive labor practices, including forced or indentured child labor.
- (3) **Employment in violation of local laws and regulations.** Plants that violate local labor laws present a higher risk of forced or indentured child labor.
- (4) **Employment in hazardous industries or under extreme conditions.** Children working in hazardous occupations or under hazardous conditions are more likely to have been coerced than children working in more age-appropriate, less dangerous situations. ILO Convention 182 To Abolish the Worst Forms of Child Labor provides internationally negotiated guidelines regarding types of child labor that are considered unacceptable to the world community.
- (5) **Missing or altered employment records.** Careless, incomplete, or unethical recordkeeping, especially altered or destroyed records, may conceal illegal business practices, including use of prohibited sources of labor.
- (6) **Workers missing from looms or other workstations that are in active operation during on-site visits.** Certain workstations require a specific crew to operate them. For example, a carpet loom may require four workers seated side by side to do the weaving. Where a loom is in active operation and two workers are missing during a plant inspection, the missing workers may be underage or forced or indentured child workers.
- (7) **Denial of generally available educational opportunities.** Although educational opportunities for children may be very limited in certain developing countries or in specific regions of these countries, the denial of education generally provided to children of the child worker’s age in the locality where the child is working may indicate that the situation involves forced or indentured child labor.

V. Means of Establishing that Merchandise Was Not Produced with Forced or Indentured Child Labor: Effect of Monitoring, Verification, and Contractor Compliance Organizations and Systems.

In seeking to establish that merchandise has not been produced with prohibited forced or indentured child labor, importers may wish to use the following measures:⁴

- (1) Independent monitoring and labeling systems. In deciding whether merchandise is admissible under Section 307, the Customs Service may take into account the membership and participation by the manufacturer, exporter, or importer in an independent external monitoring, inspection, or labeling program, such as a reliable program, either private or government-sponsored, that certifies that an exported product was not manufactured with child labor. The certification may, for example, take the form of a distinctive label attached to the exported product indicating that it is a child-labor free product.
- (2) Report of an independent private verification firm. The Customs Service may also consider a report prepared by an independent private verification service or firm that (i) a specific export or shipment was not produced with forced or indentured child labor or (ii) that a given facility does not utilize such labor. A report of such a verification service may be based, for example, on an on-site investigation of a plant in a foreign country, documenting that it does not employ forced or indentured child labor. One approach to best practices for factory monitors is the guidelines established by the Fair Labor Association, set forth in **Appendix C**.
- (3) Corporate in-house contractor compliance and verification programs. Many businesses rely on their own, detailed in-house contractor compliance and verification systems to protect themselves from involvement with unreliable suppliers who may be using unfair and/or illegal labor practices, including forced or indentured child labor. In-house procedures may incorporate, or be modeled on, best practices or codes established by specific industries for use by their members.
- (4) Evidentiary effect of using verification methodologies. Evidence that an importer has used one or more of the methodologies described in subparagraphs (1), (2) and (3) above to avoid using a prohibited source of labor to produce an imported product will be considered in conjunction with all the facts and circumstances surrounding the importation.
- (5) Reliance on verification and other preventive safeguards does not establish an entitlement to import the goods. The use of verification and other preventive measures to avoid involvement with merchandise produced with a prohibited source of labor may help establish “due diligence” and tend to rebut an inference of a willful violation, and certainly reduces the risk of a violation, but does not establish a right to import the merchandise. Where the Customs Service finds that merchandise falls within Section 307’s prohibition, it must be exported or otherwise disposed of in accordance with the Customs regulations, regardless of the good faith of the importer.

⁴ The U.S. Customs Service will determine the admissibility of merchandise and cannot delegate its responsibility to investigate violations of Section 307 and to take appropriate enforcement actions. However, in assessing proof of admissibility offered by an importer under Section 12.43 of the Regulations, the Customs Service may consider these measures, among other evidence. The U.S. Customs Service does not endorse any specific code or organization.

VI. U.S. Customs Enforcement Actions

The U.S. Customs Service emphasizes the importance of avoiding importing goods produced by forced labor, including forced child labor.⁵ Customs encourages voluntary action by importers to avoid importing such goods. However, in the absence of voluntary compliance by importers, Customs may take one of two types of enforcement action under Section 307 and related regulations to keep goods or merchandise produced in a foreign country with forced or indentured child labor from entering United States commerce when such goods are sought to be imported.⁶ These are: (1) provisional detention of the merchandise, which may apply to an individual shipment or to the entire output of a type of product from a given firm or facility or (2) a more formal finding that the class of merchandise is the product of forced or indentured child labor, which bars it from the U.S. market while the finding remains in effect. Each of these enforcement actions is discussed in more detail below.⁷

Customs Service detention orders and findings are product and producer specific. Customs identifies merchandise subject to Section 307 by the type of merchandise, the foreign manufacturer that is the source of the goods, and the form of prohibited labor.⁸ The law does not authorize categorical restrictions on all imports of a given product from a given country because some products of that kind from that country are produced by forced labor. However, once information is obtained by Customs that reasonably, but not conclusively, indicates that a particular foreign manufacturer is using a prohibited class of labor to produce a particular type of product, all imports of that product from that firm would be subject to detention. The burden then would shift to the importer to attempt to prove that any particular shipment or production run was not actually produced with a prohibited source of labor.

A. Detention Orders

Under Section 12.42(e) of the Customs regulations, if the Commissioner of Customs finds that available information reasonably but not conclusively indicates that imported merchandise has been produced with forced or indentured child labor, Customs may detain the merchandise in Customs' custody. The importer has an opportunity within three months to demonstrate that the merchandise was not produced with forced or indentured child labor. (Section 12.43 of the Customs regulations). Under Section 12.44 of the Regulations, the importer may elect to export the merchandise, provided no finding has been issued, as discussed below.

⁵ In 1999, the Secretary of the Treasury established the Treasury Advisory Committee on International Child Labor Enforcement. The Committee, chaired by the Assistant Secretary (Enforcement), makes recommendations to the Treasury Department and the U.S. Customs Service to strengthen forced or indentured child labor enforcement, in particular, through voluntary compliance and business outreach.

⁶ Customs proceeds on a case-by-case basis and uses a variety of law enforcement investigative methods to determine whether an imported product is subject to Section 307's prohibition of goods made with forced or indentured child labor, and thus subject to an enforcement action.

⁷ To enhance its enforcement efforts against forced or indentured child labor imports, in Fiscal Year 1999, the U.S. Customs Service assigned two additional child labor investigators to Bangkok, one to Hong Kong, and one to Montevideo. In Fiscal Year 2000, the U.S. Customs Service assigned an agent to Panama City. A list of Customs' attachés is provided in Appendix D.

⁸ Thus, a Customs Service detention order takes the form of the following actual detention order that identifies a product and an originating overseas manufacturer: 7/21/98 Carpets, Hand-Knotted Wool – Kumar Carpet Pvt. (Nepal).

B. Findings

If, after investigation, the Commissioner finds probable cause that a class of merchandise (typically defined as a category of merchandise, or even all merchandise, originating from a particular manufacturer, facility, or distributor) is produced with forced or indentured child labor, he will make a finding to that effect. Such findings are reviewed and approved by the Secretary of the Treasury and published in the Customs Bulletin and the Federal Register. Entry of merchandise subject to a finding is denied. Customs recently amended its regulations to provide for seizure and forfeiture of merchandise that is presented for importation when a finding covering the merchandise is in effect. (See **Appendix A.**)

C. Public List of Detention Orders and Findings

The U.S. Customs Service publishes a complete list of outstanding detention orders and findings on its website, <http://www.customs.gov>, and also in the Customs Bulletin.

VII. Importer's Opportunity to Establish Admissibility of Merchandise Under Detention or Subject to a Finding

If an importer believes that goods that have been detained or barred from entry by the U.S. Customs Service are not subject to Section 307, it may take steps to verify that the merchandise was not produced with a prohibited form of labor. Section 12.43(a) of the Customs regulations provides a certificate of origin form, which, when completed by the foreign seller or owner of the imported article, may be used to attest that the article was not produced with a prohibited form of labor. The certificate must be filed with the Customs Service within three months of the date of import.

In addition, the importer must submit to the Customs Commissioner, within three months of the date of import, a statement from the ultimate consignee of the merchandise, showing in detail that the ultimate consignee (i) had made every reasonable effort to determine the source and form of labor used to produce the merchandise, including each of its components, (ii) the full results of his investigation, and (iii) his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components. (Section 12.43(b)).

If the importer's certificate or certificates and the ultimate consignee's statements are submitted within the prescribed time and the Commissioner finds that the merchandise is admissible, the relevant port director will be advised and shall release the merchandise upon compliance with the usual entry requirements. (Section 12.43(c)).

**REPORT MERCHANDISE PRODUCED WITH CONVICT, FORCED,
OR INDENTURED LABOR BEING IMPORTED INTO THE UNITED STATES
TO THE U.S. CUSTOMS SERVICE.**

Under Section 12.42(b) of the U.S. Customs regulations, any person outside the U.S. Customs Service who has reason to believe that merchandise being imported into the United States, or likely to be imported, has been produced with convict, forced, or indentured labor under penal sanction may report the information, with appropriate supporting evidence, as follows:

Commissioner of Customs
Ronald Reagan Building
1300 Pennsylvania Avenue, NW
Washington, DC 20229

U.S. Customs Hot Line: **1-800-BE-ALERT** (in the Continental U.S.)

Email: forcedlabor@customs.treas.gov

Website: <http://www.customs.gov>,

Fraud investigations telephone: 202-927-1510

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs and international trade compliance issues, an importer, or a manufacturer using overseas production facilities, may wish to obtain advice from an expert who specializes in Customs matters and/or trade compliance and/or contractor compliance, and should take all reasonable steps to determine the type of labor being utilized to produce merchandise which it intends to import into the United States. Reliance solely on the general information in this Advisory may not be sufficient to ensure compliance with the applicable law, including 19 U.S.C. § 1307.

APPENDIX A

Statutory and Regulatory Framework Prohibiting Importation of Merchandise Produced with Forced or Indentured Child Labor

19 U.S.C. § 1307: Section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307, generally prohibits the importation of any merchandise that is mined, produced, or manufactured using convict, forced, or indentured labor under penal sanctions. Congress recently amended this provision to emphasize: “*For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.*” (Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307), *as amended*, Public Law 106-200, Title IV, Section 411, 114 Stat. 298 (May 18, 2000)). Customs enforces this prohibition under its regulations at 19 CFR §§ 12.42-12.45.

These regulations authorize Customs to *detain* merchandise in its custody if the Commissioner of Customs finds that the information available reasonably, but not conclusively, indicates that the merchandise has been produced with forced child labor or indentured child labor under penal sanction. 19 C.F.R. § 12.42(e). The importer may *export* detained merchandise at any time before it is seized and denied entry based on a finding, after investigation by the Customs Service, of probable cause that it was produced with forced or indentured child labor. 19 C.F.R. §§ 12.42(f), 12.44. The importer has an opportunity within three months from the date the merchandise was imported to demonstrate that it was not produced with forced or indentured child labor. 19 C.F.R. § 12.43. Where merchandise is subject to a detention order and proof is not timely submitted or does not establish the admissibility of the merchandise, the merchandise will be deemed *abandoned and destroyed* 60 days after notice is issued to the importer that the merchandise will be excluded from entry, unless it has been exported or a protest has been filed. Finally, under recently amended Customs regulations implementing Section 307, after investigation by the Customs Service, goods covered by a finding under 19 C.F.R. § 12.42(f) of probable cause that they were produced with forced or indentured child labor are subject to *seizure and forfeiture*. 19 C.F.R. § 12.44(b).

In addition to Section 1307 and its implementing regulations, a number of other Customs and Criminal Code provisions may apply in specific cases. These provisions are summarized below.

CIVIL SANCTIONS:

19 U.S.C. § 1592 : This statute provides for significant civil monetary penalties for material false statements and other material false acts/omissions, resulting from fraud, gross negligence, and negligence, related to introducing or attempting to introduce merchandise into the United States contrary to law. The amount of the penalty equals the value of the goods introduced or attempted to be introduced into the United States. Accordingly, a person involved with the introduction or attempted introduction of goods made with forced child labor or indentured child labor under penal sanctions would be subject to a civil penalty equal to the value of the proscribed goods if such false statements, acts, or omissions were made in connection with the importation. In addition, under certain circumstances, Section 1592 also authorizes the civil forfeiture of the imported merchandise.

19 U.S.C. § 1595a(b): This provision authorizes a civil penalty equal to the value of any merchandise introduced or attempted to be introduced into the United States contrary to law.

CRIMINAL SANCTIONS:

18 U.S.C. § 545: Under 18 U.S.C. § 545, it is a felony for a person to fraudulently or knowingly import or bring into the United States merchandise contrary to law. Thus, a person who, with the required criminal intent, brings merchandise into the United States in violation of Section 307, may be subject to prosecution under Section 545. Section 545 also punishes persons who receive, conceal, buy, sell, etc., any merchandise after importation, knowing the merchandise has been imported contrary to law. Accordingly, a person who fraudulently or knowingly imports goods made with forced or indentured under penal sanctions child labor, or engages in any of the subsequent activities mentioned above (e.g., transportation or sale thereof), would be liable to prosecution for violating Section 545. In addition, 18 U.S.C. § 545 authorizes the civil forfeiture of any merchandise introduced into the United States in violation of this section.

18 U.S.C. § 542: This provision makes it a felony to enter or introduce merchandise into the commerce of the United States by means of false statements, etc., or to make a false statement in any declaration without reasonable cause to believe the truth of such statement.

APPENDIX B: RESOURCES FOR VOLUNTARY COMPLIANCE BY INDUSTRY.

The U.S. Customs Service seeks to obtain informed and voluntary compliance with all customs and trade laws. This Appendix identifies sources of information and sets out steps that importers may take that may help reduce the risk of becoming engaged in a transaction involving imported merchandise produced with forced or indentured child labor.

I. Information Sources

- (1) ***U.S. Department of Labor reports.*** The United States Department of Labor has produced a series of reports on child labor, *By the Sweat and Toil of Children, Volumes I –VI*, that contain extensive information on countries and industries where child labor is believed to be prevalent.
- (2) ***U.S. Department of State human rights reports.*** The U.S. Department of State files an annual volume, *Country Reports on Human Rights Practices*, with the House Committee on International Relations and the Senate Foreign Relations Committee. The report documents human rights conditions, including child labor, for every nation.
- (3) ***U.S. Embassy sources.*** An importer may wish to consult the office of the Economic Minister or Counselor at the U.S. Embassy in a country in which it wishes to do business. In addition, the U.S. Department of Commerce may have commercial representatives at a given embassy or consular post who may be able to furnish information regarding potential business partners. U.S. Customs also has attachés stationed at a number of embassies. (See **Appendix D.**) A number of the Customs attachés have specific backgrounds in prison labor and forced or indentured child labor enforcement.
- (4) ***International organizations.*** International organizations, such as the International Labor Organization (ILO) and the United Nations Children’s Fund (UNICEF), issue reports on child labor, as do a variety of non-governmental organizations (NGOs) dedicated to human rights, worker rights, and child welfare.
- (5) ***Local non-governmental organizations in the exporting country.*** Apart from the well-known international organizations referred to above, there are many local organizations in developing nations committed to protecting children’s rights. These organizations are often valuable resources in identifying contractors to avoid, and also suggesting reliable contractors who have pledged to support efforts to eliminate child labor from their industries.
- (6) ***Labor unions in the exporting country.*** Local labor unions are likely to have useful information about working conditions in various companies, and will be aware of companies that demonstrate concern for workers’ rights and welfare through their relationships with the unions and other workers’ organizations. Unions may also be able to arrange interviews with current or former employees of contractors with whom the importer is considering establishing a business relationship.

- (7) ***Manufacturers' and exporters' associations and other trade and business groups in the exporting country.*** Local manufacturers' and exporters' associations in exporting countries may have adopted codes against unfair labor practices, including child labor and bonded labor, which is contrary to law in many of these countries. Members are required to follow the codes as a condition of membership in the association and may be expelled if they violate the codes. These associations can provide current lists of members who honor their standards and may be able to furnish information about non-member businesses in their industries.

II. Additional Safeguards

- (1) ***On-site inspections.*** An on-site inspection may disclose the presence of one or more red or yellow flags identified in this advisory, and/or produce valuable information about a supplier's capability to fulfill a contract without using a prohibited source of labor or without subcontracting to another facility that may do so. This is a matter of "knowing your supplier."
- (2) ***Industry codes and checklists.*** A number of U.S. companies and trade associations in the toy, apparel, and other industries have developed detailed codes and checklists to promote compliance with core labor standards. Volume III of the U.S. Labor Department *By the Sweat and Toil of Children* series, entitled *The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?*, reprints a number of these codes.

APPENDIX C

GUIDANCE FOR FACTORY MONITORS

STEPS THAT MONITORS CAN TAKE TO DETERMINE IF FORCED OR INDENTURED CHILD LABOR IS PRESENT IN THE WORKPLACE

Importers and others involved in import transactions may want to use the services of verification companies that actively investigate the conditions under which merchandise for export is produced. In availing themselves of these services, importers should make sure that verification efforts include appropriate steps to determine whether goods have been produced in whole or part with prohibited forced or indentured child labor. These steps can include the following:

I. Consult knowledgeable local information sources about labor conditions.

(For a list of available information sources about local labor conditions, see **Appendix B.**)

- (1) Inquire into whether instances of forced or indentured child labor are known or suspected in the area.
- (2) Determine whether the government is known or suspected to tolerate or acquiesce in child labor in export industries.
- (3) If migrant labor is used locally, check whether contract terms typically limit child workers' ability to leave their jobs before their contract expires.
- (4) If recruitment agencies are used, ask whether they limit child workers' freedom to leave their jobs before their contracts expired, or whether child workers or their families are forced to pay substantial fees to these agents.
- (5) Inquire about restrictions on child workers' freedom of movement in local factories that may suggest forced labor.
- (6) Identify methods for verifying workers' ages that are particularly useful or futile in the local area.
- (7) Identify interview techniques and questions that may be particularly useful in verifying workers' ages.

II. Interview Workers

- (1) Ask how child workers arranged for terms of employment and whether they were aware of their right to decide whether or not to accept employment under these terms.
- (2) Determine whether any side agreements exist that require payments violating the terms of employment.

- (3) Interview workers to determine how the hiring process worked.
- (4) Ask how child workers are housed, and how the housing was arranged.
- (5) Ask what steps, if any, a child worker must take to terminate his or her employment. Ask if they know of child workers who have terminated their employment contracts before the contract period ended.
- (6) Ask if workers are required to turn over their identity papers to management and if so, how, if at all, are they able to obtain the return of their documents.
- (7) Use indirect methods to verify workers ages, such as asking workers the year they were born, how old their siblings are, or, in appropriate regions, what “year” (year of the Dog, etc.) they were born. These and similar techniques may produce accurate information from child workers coached to state a false age.
- (8) Ask what documentation workers were asked to show concerning their age. This may provide a useful check against management’s statement that it seeks reliable age verification.
- (9) Ask whether management restricts the nature and amount of work performed by employees under 18 years old.
- (10) Ask workers under 18 if they are restricted in the nature and amount of work they are allowed to do.

III. Interview Management

- (1) Ask how workers arranged for terms of employment.
- (2) Determine if side agreements require payments that violate these provisions.
- (3) Determine how the hiring process works, and if there are any agreements with hiring or recruiting agents. In some industries in developing countries, unscrupulous agents often recruit or even kidnap children to work away from home as a source of cheap labor.
- (4) If migrant labor is used locally, check whether contract terms limit child workers’ ability to leave their jobs before their contract expires.
- (5) Ask management what steps, if any, child workers must take to terminate their employment. Ask management if any child workers have terminated

their employment contracts before their term ended. Ask to see any records of workers who have done so, to verify the practice and make sure that the child's ability to terminate employment is not inappropriately restricted.

- (6) Ask managers and line supervisors how hiring, assignment, promotion, and compensation decisions are made. Greater objectivity in making such decisions indicates the work situation is less likely involving forced or indentured labor. If managers and supervisors cannot answer fully, subjective decision-making that can be used to further coercion may be present.
- (7) Ask how workers obtain housing.
- (8) Ask management how, if at all, child workers can obtain return of their identification papers, if management restrains them.
- (9) Check to make sure that management is familiar with and understands applicable child labor regulations, particularly restrictions on young workers.
- (10) Ask relevant management to explain factory procedures for verifying workers' ages.
- (11) Ask whether and how management tries to restrict the nature and amount of work performed by employees under 18 years old.
- (12) Examine documentation and monitoring practices pertaining to wages and benefits to check for non-payment or under-payment of wages and benefits.
- (13) Review all labor contracts to ensure compliance with wages and benefits provisions.
- (14) Review payroll to determine that advances are not paid or withheld in ways that indicate forced or indentured child labor.
- (15) Review records to verify that, if the law requires government permits or permission from parents as a condition of employment, employers keep all such documentation on-site for inspection at all times.
- (16) Verify that personnel records of all child workers contain the most reliable proof of age documentation available, such as a birth certificate, to verify date of birth. If the factory is located in a region or country where government documentation is not readily available or reliable, other means, such as medical or religious records, could be used.

- (17) Where reliable public proof of age documentation is not readily available, determine whether other means of verifying age are used, such as letters from parents, teachers or other known community members, attesting to the individual's age.
- (18) Review documentation of any apprenticeship or job training programs to ensure that participants are not below the appropriate age.

IV. Capacity Review

Fundamental questions posed in a capacity review include: (i) Does the factory have the ability to produce final (completely constructed) product in the quantities booked or scheduled? (ii) Has the factory performed all operations for work shipped in the period under review? If the answer to either of these questions is no, it may be necessary to confirm that work performed elsewhere is not performed by forced or indentured child labor.

V. Visual Inspection

- (1) Observe factory entrances, docks, warehouses and dormitories, particularly at shift changes, to determine if child workers are moved or goods transported to secondary locations. The necessity for surveillance should normally be left to the judgement of the monitor or monitoring team.
- (2) Observe and identify any employees who appear to be very young and follow-up through an appropriate combination of interviews and record review to determine proof of age and whether the individual is subject to forced or indentured child labor.
- (3) Identify groups of machines or workstations that are not staffed or are only partially staffed. Ask other workers the names of people who normally work at these stations and their descriptions. Check their personnel files.
- (4) If there are any child care or apprenticeship facilities near the factory, observe if any underage persons linked to those facilities are near or present in the factory.
- (5) Determine if there are areas, operations and functions in the factory that are considered hazardous for workers under 18.

APPENDIX D
LIST OF CUSTOMS' ATTACHÉS

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BANGKOK, THAILAND

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FAX: 011-86-10-6500-3032

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WASHINGTON, D.C. 20521-7300

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GERMANY

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FAX: 011-571-315-2153

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CUSTOMS ATTACHE
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B-1000
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WORLD CUSTOMS ORGANIZATION
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APO AE 09724

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AMEMBASSY 011-58-2-975-2011
FAX: 011-58-2-975-6556

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APO AA 34037

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FPO AP 96521-0006

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UNIT 45004, P.O. BOX 221
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